

UNITED STATES DEPARTMENT OF JUSTICE

OFFICE OF THE DEPUTY ATTORNEY GENERAL

WASHINGTON, D. C.

MAY 17 1962

Honorable Warren G. Magnuson
Chairman, Committee on Commerce
United States Senate
Washington, D. C.

Dear Mr. Chairman:

This is in response to your request for the views of the Department of Justice concerning the bill (S. 2361), "To amend sections 303 and 310 of the Communications Act of 1934 to provide that the Federal Communications Commission may, if it finds that the national security would not be endangered, issue licenses for the operation of an amateur station to certain aliens for any temporary period, not in excess of three years."

Under existing law the Federal Communications Commission is authorized to issue radio station operators licenses to qualified citizens of the United States. However, with respect to the operation of radio stations on aircraft the Commission also is authorized, if it finds that the public interest will be served thereby, to waive the requirement of citizenship in the case of persons holding United States pilot certificates or persons holding foreign aircraft pilot certificates valid in the United States on the basis of reciprocal agreements entered into with foreign governments (47 U.S.C. 303(e)). Aliens or representatives of aliens of the class described above also may be granted and may hold licenses for radio stations on aircraft although aliens or representatives of aliens generally may not be granted or hold such licenses (47 U.S.C. 310).

The bill would amend existing law (sections 303 and 310 of the Communications Act of 1934) by enlarging the category of aliens who may be issued licenses. It would

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authorize the Federal Communications Commission to issue amateur operators licenses and to issue licenses for amateur stations to aliens on a basis of reciprocity if the Commission finds that the national security would not be endangered.

As the Committee is aware, dangers to the national security are inherent in the field of communications. In Borow v. F.C.C., 285 F. 2d 666, a case involving the refusal of the Commission to renew appellant's radio operator's license because of his failure to reply to a questionnaire concerning membership in the Communist Party or subversive organizations, the Court stated:

"Radio beams are the operational essence of quick modern communication and of the control of modern weapons. Not only the power to use these electronic devices but the power to interfere with waves being used by others should, it might properly seem to the Commission, be lodged in those whose loyalty to the United States is made to appear. Surely no such power should knowingly be accorded to those who belong to organizations advocating or reaching the overthrow of this government by force or violence. At the very least, the Commission is entitled to know whether those who it licenses to control these devices belong to such an organization. Any program less than that simple necessity would be not only short-sighted but dangerous to the national security."

In August of 1960 the Vice-President of the Mutual Broadcasting System stated before the House Un-American Activities Committee that even a few Communist agents or sympathizers could play havoc with the Conelrad Emergency Radio System. An Air Force representative said at the same hearing that a subversive agent could cause panic among the public if he gave false instructions over Conelrad stations.

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Also, the Vice-President of the American Cable and Radio Corporation and its subsidiaries testified in 1957 that subversive technicians if placed in strategic spots, could copy government codes and disrupt international communications.

Radio communication is an important tool to successful espionage operations in time of peace. In an emergency it is of even greater importance to espionage, sabotage and other subversive operations, when diplomatic channels are not available.

The security considerations mentioned above are based largely on positions which have been asserted by the Federal Communications Commission and by experts in the communications field and it would seem that they would be in the best position to comment on what extent, if any, the provisions of this bill would add to such security problems.

Aside from security considerations, which might remain substantially the same regardless of whether the bill is enacted, the subject of this legislation is not a matter for which the Department of Justice has primary responsibility and accordingly we make no recommendation as to its enactment. There are however certain features of the bill to which attention is invited.

The amendment to section 303 would give the Commission power to revoke summarily any amateur operator's license granted to an alien. However the amendment to section 310 regarding licenses for amateur radio stations issued to aliens contains no similar provision. It is recommended, therefore, that the amendment to section 310 specifically provide for summarily closing any station licensed to an alien, in line with the provision for summarily revoking an alien operator's license.

Although the bill does provide for summary revocation of an amateur operator's license issued to an alien, it does not, in our opinion, make it sufficiently clear that

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An alien applicant for a license should not be entitled to a hearing. Since the issuance of licenses to aliens under the provisions of this bill might involve confidential considerations relating to national security, it is suggested that you consider the addition of express language to the effect that alien applicants, notwithstanding any other provisions of the Communications Act or of the Administrative Procedure Act, would in no circumstances be entitled to any hearing rights.

On page 2, lines 5 and 25 appears the phrase "to which an alien owes permanent allegiance". That description is vague and might lead to doubt by the Commission in passing upon applications for licenses for amateur radio stations. It is suggested that this might be eliminated by substituting the language "of which the alien is a national, citizen or subject."

Also it is noted that the bill would extend the privilege of obtaining such a license to any "alien". While that result may have been intended the term would include nonimmigrants such as aliens who are in the United States temporarily, passing in transit, or are here only for other short periods of time. It might even include aliens who came to the United States illegally.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely yours,

Nicholas deB. Katzenbach
Deputy Attorney General

COMMENTS OF THE FEDERAL COMMUNICATIONS COMMISSION
ON S. 920, A BILL TO AMEND SECTIONS 303 AND 310
OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED,
WITH RESPECT TO ALIEN AMATEUR RADIO OPERATORS

S. 920 would amend section 303 (dealing with operators) and section 310 (dealing with station licenses) to provide that the Federal Communications Commission may, if it finds that the public interest, convenience, or necessity may be served, issue authorizations, but not licenses, for alien amateur radio operators to operate their amateur radio stations in the United States, its possessions, and the Commonwealth of Puerto Rico provided there is in effect a bilateral agreement between the United States and the alien's government for such operation by United States amateurs on a reciprocal basis. The bill also provides that other provisions of the Communications Act and the Administrative Procedure Act will not be applicable to any request or application for or modification, suspension, or cancellation of any such authorization.

This Commission has no objection, in principle, to permitting operation by alien amateurs on a reciprocal basis. However, as Congress is aware, such licensing would constitute a departure from the general concept embodied in the Communications Act against granting radio station licenses or radio operator licenses to aliens. At the present time, there are only two exceptions to this prohibition contained in sections 303(1) and 310(a) of the Communications Act against the granting of radio operator licenses and radio station licenses to aliens. The first was contained in a convention between the United States and Canada, effective May 15, 1952 (TIAS No. 2508), which permits citizens of either country who are station licensees to operate certain radio equipment, including amateur radio stations, while in the other country. The second exception results from amendments to sections 303(1) and 310(a), adopted in 1958 (Public Law 85-917), which permit the licensing of certain alien pilots flying aircraft in the United States. 1/

The Commission commented on a bill in the 87th Congress, S. 2361, also designed to permit alien amateurs to operate in the United States. S. 920 was apparently drafted in an attempt to meet some of the factors which the Commission indicated in its earlier comments should be given careful consideration if Congress determined that legislation permitting reciprocal authorization of alien amateurs should be enacted.

1/ Section 310(a) of the Communications Act also provides that nothing in that subsection shall prevent the licensing of radio apparatus on board any vessel, aircraft, or other mobile station of the United States when such apparatus is required by law or treaty.

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The Commission's position can be summarized as follows: While the Commission has received a small number of sporadic inquiries from United States citizens desiring to use their amateur equipment in other countries and who cannot do so because the United States does not grant reciprocity, we have no indication that the interest in the matter, or its merits, considering the problems involved, would warrant our active support of the measure. We do, however, have no objection in principle - should the Congress determine such legislation is in the public interest.

One of the principal difficulties with any such proposal is the question of national security. The Commission's chief concern with S. 2361 was based on the requirement that the Commission find that the national security not be endangered by such grant. At that time, we pointed out our strong feeling that the Commission is not the appropriate agency to assume such responsibility. Our comment continued:

"... This Commission is not staffed to make such national security findings with reference to alien applicants. There would appear to be a serious problem concerning the Commission's ability to obtain the information necessary to carry out this sensitive task as well as our ability to evaluate adequately whatever information is obtained. It should be noted that this Commission has not been given the task of making security clearances for alien applicants under the two exceptions which now exist: e.g., with respect to foreign pilots and Canadian mobile equipment. To the extent, therefore, that national security considerations are involved, we believe they should not be the responsibility of this Commission...."

While S. 920 would not specifically place this burden upon the Commission, and while reciprocal agreements -- which would likely be limited to friendly nations -- might reduce the national security problem -- consideration of national security would remain in individual cases.

What the Commission would prefer -- should Congress determine some legislation along this line is desirable -- is that the Commission's role in the matter be essentially a ministerial function of registering such operators. Thus, enactment of a bill by the Congress would itself

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be a determination that it is in the public interest to permit the operation. The Department of State and other appropriate agencies concerned could be given the responsibility of determining with which countries reciprocal agreements would be concluded. And -- of overriding importance -- the Department of Justice or other appropriate agency of Government, other than the Federal Communications Commission, should be given the statutory obligation to undertake whatever security measures are appropriate and to report its findings and recommendations to the Commission.

Under this type of procedure the Commission would then -- without the necessity of a public interest finding (which, in effect, would have been made by the Congress) and without any responsibility for security determinations (which would have been accomplished by other appropriate agency) -- perform the ministerial task of registering such individuals in the absence of any indication from the agency performing the security duties that registration of particular individuals should be denied. The Commission also could engage in such limited monitoring of such operations as proves necessary and feasible. These are essentially the same functions the Commission already performs under the treaty with Canada on this subject.

Any such legislation should provide that registration, renewal, or termination of registration shall be in accordance with procedures established by the Federal Communications Commission (without the necessity of rule making) and not entitled to any substantive or procedural benefits of the Communications Act or the Administrative Procedure Act.

As already mentioned, operation similar to that intended is permitted with respect to Canadian citizens in the United States by virtue of a treaty which was ratified by the Senate. The main purpose of S. 920 seems to be to pave the way for some similar authorization with respect to citizens of other countries -- but apparently through executive agreements not requiring Senate ratification. If this is what is intended, it may be profitable, should Congress determine that some such legislation is in the public interest, to explore the desirability of a separate statute embodying the entire statutory scheme, and placing specific security responsibility outside the Commission.

In the event the Committee determines that some legislation dealing with this subject is in the public interest, the Commission would be pleased to make its staff available to provide such technical assistance as may be desired.

Adopted: July 3, 1963